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XI-189/(Jail)
C. J. P. R. 11/94/2,000

GA 2014/96

APPEAL OF PRISONER

No. 4493/53 Name Gauri

Father's name Gauri Ram Sahin Ram Chandra Ram Gauri Ram Sahin Ram

Residence P. S. - Sahin Ram Sahin Ram Age 42 years

Sentenced to 3 years On 1/9/96

Under section 100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/1226/1227/1228/1229/1230/1231/1232/1233/1234/1235/1236/1237/1238/1239/1240/1241/1242/1243/1244/1245/1246/1247/1248/1249/1250/1251/1252/1253/1254/1255/1256/1257/1258/1259/1260/1261/1262/1263/1264/1265/1266/1267/1268/1269/1270/1271/1272/1273/1274/1275/1276/1277/1278/1279/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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 2014 of 1996

Appellant : Jagdish Halba

Vs.

Respondent : State of Madhya Pradesh

JUDGMENT FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE SHRI L.C. BHADOO, J.

Sd/-
L.C. Bhadoo
Judge

08/03/2006

POST FOR JUDGMENT 9th OF MARCH

Sd/-
DHIRENDRA MISHRA
Judge

**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ**

CRIMINAL APPEAL NO. 2014 OF 1996

Appellant : Jagdish Halba

— Vs. —

Respondent : State of Madhya Pradesh

Miss Nirupama Bajpai, learned counsel for the appellant.
Shri M.P.S.Bhatia, learned Panel Lawyer for the respondent/State.

JUDGMENT
(09.03.2006)

Dhirendra Mishra, J

This is the prisoner's appeal under Section 374(2) of the Code of Criminal Procedure through Superintendent, Central Jail, Raipur against the impugned judgment dated 09.09.1996 passed in S.T.No. 127/94 by the I Additional Sessions Judge, Rajnandgaon whereby the learned I Additional Sessions Judge after holding the accused/appellant guilty of causing homicidal death of Dashru Halba convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine to further undergo imprisonment for one month. The accused/appellant has also been convicted under Section 201 of the IPC and sentenced to undergo three years' R.I. with a fine of Rs.100/-, in default thereof to further undergo one month imprisonment. Both the sentenced were directed to run concurrently.

2. Case of the prosecution, in nutshell, is that Anandram (PW-1) lodged First Information Report in Police Station – Ambagarh Chowki, Rajnandgaon on 09.02.1994 at about 16.30 hours mentioning therein that a day before thereto Dashru Halba – son of his elder father, who resided with him went with appellant Jagdishram to village Kodizob to watch Ramleela at about 9.00 p.m., however, his brother Jagdish returned alone in the morning and on being asked about Dashru he stated that he returned from the midway and did not go to

witness Ramleela. Pankin Bai – his paternal aunt, had gone for harvesting *lakdi* in the field and returned weeping and informed that someone has assaulted Dashru over his head and he is lying dead in Behara whereupon he along with Kotwar Patel, Shriram Mahar, Banshilal Mahar, Charan Halba and others went and saw that Dashru was lying dead. They found profuse bleeding as a result of the injury over his forehead. They also found blood soaked lungi of Jagdishram on the place of occurrence. He suspected that Jagdish had called Dashru on the pretext of witnessing Leela and has murdered him. After registering the offence Station House Officer, K.P.S. Paikra (PW-14) proceeded for the scene of occurrence and performed inquest (Ex.P/3) over the dead body after due notice to the witnesses in their presence. Dead body was sent for postmortem examination to Primary Health Centre, Ambagarh Chowki vide Ex.P/11-A. Dr. V.B. Dhoke (PW-7) conducted postmortem and submitted his report of Ex.P/11. In the postmortem the doctor noticed multiple lacerated injuries over the frontal hind, maxillary part of the face and nozzle bones or head injuries were present in the upper part of the face. He also found fracture of frontal bone on multiple places and three fractures diffused in each other. He found both the maxillary bones fracture in the right side, there were two fractures and in the left side there was one fracture. Both eyeballs were depressed in the sockets $\frac{1}{2}$ " deep that became irregular in shape and all the injuries were caused by hard and blunt object. The frontal bone of the brain material has lacerated and has come out partially from the frontal head. All the injuries were overlapping. He opined that the cause of death is shock due to excessive bleeding injury to brain and cerebral hemorrhage and duration since death was 24 to 36 hours. Spot map of Ex.P/4 was prepared. Bloodstained soil and plain soil, blood soaked lungi, plastic container of tobacco, bloodstained soil under the head of the deceased and plain soil near the dead body were seized from the spot vide Ex.P/5. In pursuance to the memorandum of the accused (Ex.P/6) a bloodstained club and bloodstained stone were seized from the field of Chatur Halba at the instance of the accused vide Ex.P/7. On being produced by the accused a white *Pajama* (trouser) bearing blood stains was seized vide Ex.P/8 from the house of Birbal. Bloodstained vest of the accused was seized vide Ex.P/9. The full shirt and towel belonging to Birbal Halba were

seized from the accused. Bloodstained clothing of the accused, club and bloodstained stone were sent to the doctor for his opinion whether the injury caused over the person of the deceased could be caused by the above weapon and whether the clothing contain bloodstains vide Ex.P/21. The doctor gave his opinion vide Ex.P/12 that bloodlike stains are present on the above articles, however, he advised for chemical examination for confirmation. He further advised that the injuries present over the person of the deceased could be caused by the club and the stone. Similar opinion was also given by the doctor vide Ex.P/13 regarding the seized soil and lungi. The accused was sent to the doctor with a request to cut the nails of both the hands of the accused and seal it. The doctor after cutting the nails of the accused, sealed it and advised for chemical examination of the same. Spot map of Ex.P/15 was got prepared by the Halka Patwari. The sealed packet containing bloodstained clothes of deceased Dashru sent by the doctor after postmortem was seized vide Ex.P/19. The bloodstained lungi seized from the spot and the shirt and towel seized from the accused were sent for identification to Tehsildar, Ambagarh Chowki vide Ex.P/23. Test identification was conducted by the Executive Magistrate, Ambagarh Chowki vide Ex.P/28 in the presence of witnesses namely Anandram, Meena Bai and Birbal. Seized articles were sent for chemical analysis to Forensic Science Laboratory, Raipur vide Ex.P/24. The Serologist submitted his report of Ex.P/25 and found human blood on bone pieces, lungi and trouser of the accused, earth, wooden stick, stone, shirt and towel of the deceased. However, blood stains could not be determined as the samples were disintegrated. Sr. Scientist Officer, F.S.L., Rajnandgaon inspected the spot and submitted his report (Ex.P/26). He also submitted a diagram of the place of incident (Ex.P/27). After completion of the investigation charge sheet under Sections 302/201 of the IPC was filed against the accused in the Court of Judicial Magistrate First Class, Rajnandgaon who in turn committed the case to the Court of Sessions Judge, Rajnandgaon and learned I Additional Sessions Judge, Rajnandgaon received the same on transfer for trial.

3. Charges under Sections 302/201 of the IPC were framed against the accused. The accused abjured his guilt. Prosecution in order to establish the charges against the accused/appellant examined 15 witnesses in all.

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Statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded his innocence and false implication.

4. Homicidal death of deceased Dashru is not in dispute. Even otherwise taking into consideration the evidence of Dr. V.B. Dhole (PW-7) who after conducting postmortem found three fractures over front portion of the head and over both the jaws and has further found that the brain matter had come out because of fracture of the skull and as per his opinion the cause of death was due to excessive bleeding and injuries over the brain, the homicidal death of deceased Dashru is established.

5. There is no eyewitness to the incident and the whole case of the prosecution is based on circumstantial evidence. The circumstances relied upon by the prosecution may be summarized as under;

- (i) that the appellant was last seen with the deceased while he was alive;
- (ii) that on the next day of incident the appellant left the clothing worn by him at the time of incident in the house of Birbal at village Ladizob after washing the same and returned to his home after putting on the towel and shirt of Birbal from his house and that the trouser of the appellant contained human blood;
- (iii) that the blood soaked lungi of the appellant was found on the place of incident which was identified by his brother Anandram; and
- (iv) that on the basis of memorandum of the appellant bloodstained wooden plank and stone were seized.

6. So far as the first circumstance of last seen together is concerned, the prosecution has examined PW-1 Anandram who has stated that Dashru is his cousin brother. At about 8.00-9.00 p.m. he and Dashru took their meals, thereafter accused Jagdish came to their house and asked Dashru to accompany him to witness Ramleela. Their house and the house of Jagdish

are adjacent. Dashru and Jagdish proceeded to see Leela, however, in the night Dashru did not return and in the next morning Pankin Bai came and informed that Dashru is lying in the field and someone has killed him, whereupon he along with Patel and Kotwar and other persons went to see Dashru. Jagdish did not tell anything about Dashru. They found the dead body of Dashru lying in the *bahara* field. Dashru had sustained injuries over his head and blood was oozing out of the same. In the cross examination he has stated that they were cultivating the field of Dashru on the basis of share cropping and after harvesting his share was taken by his sisters and his land is being sown by his sisters. Two acres of agricultural land is jointly recorded in the name of Dashru, Anand, Ganesha Bai and himself and this land is managed by him. However, the crop from this field will be shared by his sisters also. There is no suggestion on behalf of the accused/appellant that deceased Dashru did not go to witness Ramleela with the appellant as alleged. PW-6 Ganesha Bai - mother of the appellant and Anandram, has corroborated the statement of Anandram and has stated that Dashru and Jagdish went to see Ramleela. Though this witness has stated in her cross examination that Jagdish and Dashru did not proceed in her presence, however, there is no suggestion on behalf of the accused that he and Dashru did not go to see Leela. The above statements are also corroborated by the First Information Report of Ex.P/1. Dr. V.B.Dhoke (PW-7) who conducted postmortem on the body of Dashru on 10.02.1994 at about 10.00 a.m. has stated that the time of death of the deceased was 24 to 36 hours before the postmortem and thus time of death of Dashru was assessed to be between 10.00 p.m. on 08.02.1994 to 10.00 a.m. on 09.2.1994 on the way from Karamtara to village Ladizob as described in the spot map of Ex.P/4. In the cross examination the defence has not been able to elicit anything to discredit the version of the above witnesses. Thus it is held that the prosecution has been able to establish the circumstance of last seen together.

7. To establish the second circumstance, the prosecution has examined PW-4 Birbal of village Ladizob who has stated that the day on which Dashru died, Jagdish came to his house in the morning and after washing his trouser, he took bath, put on his shirt and towel and left his trouser in his house and

went out of the house. In that period Ramleela was being exhibited in his village and he had also gone to see Ramleela. PW-2 Banshilal who is a witness to memorandum of the appellant, has corroborated the statement of PW-4 Birbal and stated that memorandum of Ex.P/6 was given by the appellant in his presence in which the appellant has stated that he left his worn cloths in the house of Meghnath (father of PW-4 Birbal). This witness has further stated that on the information of the appellant his trouser was seized from the house of Meghnath vide Ex.P/8. The statement of PW-4 Birbal further stands corroborated by the statement of PW-12 Girdhari Lal of village - Karamtara who has stated that the accused informed that he has killed the deceased with lathi and has hidden his clothes in the house of his relative Meghnath after washing the same and the same was got recovered at the instance of accused from the house of Meghnath vide seizure memo of Ex.P/8 where his signature finds place and in the seizure memo he has signed from 'B' to 'B'. In the cross examination he has stated that the trouser in question was got recovered by the accused and not by Meghnath and as the accused has stated that the trouser belonged to him, therefore, he stated that the trouser is of the accused. The trouser of the appellant seized from the house of Maghnath was sent to the Serologists for chemical examination and as per the report of the Serologists (Ex.P/25) the trouser contained human blood. Thus the prosecution by the above evidence has further established the second circumstance relied upon by it.

8. To establish the third circumstance, the prosecution has examined PW-1 Anandram - brother of the accused/appellant who lodged the FIR immediately after recovery of the dead body of Dashru. In the said report he has stated that he went to see the dead body in the field and found a blood soaked lungi of Jagdish lying in the place of incident which was subsequently seized by the police vide seizure memo of Ex.P/5 in the presence of the witnesses Banshilal and Parsadi Ram. The lungi is marked as article 'C'. Naib Tehsildar (PW-15) and the Executive Magistrate conducted test identification of the seized articles and the lungi in question was mixed with other lungis and PW-1 Anandram correctly identified the lungi to be that of accused Jagdishra. PW-1 Anandram has corroborated the statement of Tehsildar that he had correctly identified the

lungi to be that of Jagdish in the test identification parade. His wife also correctly identified the lungi of Jagdish. In the cross examination he has stated that the lungi in question was mixed with 4-5 other lungis and he could correctly identify the lungi of Jagdish because the other lungis mixed with did not contain bloodstains except the lungi of Jagdish. Therefore, in view of the above test identification it cannot be conclusively said that the lungi so seized was that of accused Jagdish and for the above reason we do not think that the prosecution has been able to establish this circumstance.

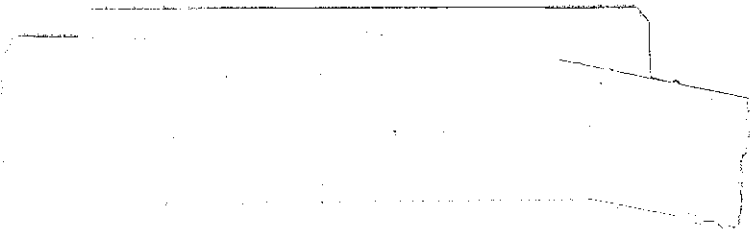
9. So far as the fourth and last circumstance is concerned, memorandum of Ex.P/6 was recorded in the presence of PW-2 Banshilal who has stated that on interrogation the accused has stated about stone etc. and got the same recovered. He has admitted his signature over the memo of Ex.P/6. He has further stated that the lathi and the stone were concealed and the accused discovered the same and got it seized vide seizure memo of Ex.P/7 which bears his signature. He has also stated that at the instance of the accused a shirt and vest was seized vide Ex.P/10 which bears his signature. However, in the cross examination he has stated that the stone and the rafter were in the open place which was frequented by all. The stone and wooden stick were sent for chemical examination and the Serologists opined that the wooden stick contained human blood. The statement of PW-2 Banshilal is duly corroborated by the statement of investigating officer K.P.S. Paikar (PW-14) who recorded the memorandum of the appellant and effected seizure vide Ex.P/7, Ex.P/8, Ex.P/9 and Ex.P/10. The statement of PW-2 Banshilal is also corroborated by the statement of Binjhawar Singh (PW-11) who has stated that on interrogation by the police the accused informed that the wooden stick and stone by which he has killed Dashru, had been hidden in the field and thereafter led the investigating officer to that place from where the same were recovered and seized. However, he did not accompany the investigating officer to the place where the articles were hidden.

10. Relying upon the judgment of the Hon'ble Supreme Court reported in 2003(4) SBR 571 in the matter of Bharat Vs. State of M.P., learned counsel for the accused/appellant argued that where date of death was not date of last

seen together, the circumstance of last seen together is of no consequence and the appellant could not be convicted on the basis of this circumstance alone.

11. However, the facts of the instant case and that of the case cited are distinguishable inasmuch as in the case cited above the Court did not believe the circumstance of last seen together on the ground that death of the deceased in that case occurred on 08th January 1981 whereas the earliest date of death could be 10th of January 1981 as per the postmortem report, therefore the evidence of last seen was not considered to be an incriminating circumstance against the accused/appellant. However, in the instant case we have already observed that the time of death of the deceased as per assessment of the doctor performing autopsy corresponds with the date of last seen given by the witnesses. It is further worthwhile to mention here that the deceased went with the appellant at about 8.00-9.00 p.m. on 08.02.1994 towards village - Ladizob to see Ramleela and dead body of the deceased was found on the same way in the filed in the next morning by PW-5 Pankin Bai. Apart from the circumstance of last seen together, the second circumstance relied upon by the prosecution is also material as the appellant went to the house of Birbal, washed his trouser worn by him at the time of incident and returned from his house after putting on the shirt and towel of Birbal. We have already held that the above circumstance has been duly established by the prosecution and the trouser so seized contained human blood as opined by the Serologists. This circumstance is a very strong circumstance which leads to irresistible inference that the appellant proceeded towards village - Ladizob along with deceased Dashru and after committing murder of Dashru returned back alone and left his bloodstained trouser after washing in the house of Birbal. However, the appellant has not been able to explain this circumstance. The seizure of bloodstained wooden stick is also established which contained human blood as per the report of Serologists.

12. It is a settled law that when a case rests on circumstantial evidence the following tests must be satisfied;



- 1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- 2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- 3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- 4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. Thus on the basis of aforesaid discussions, we are of the considered opinion that the prosecution has been able to prove the above circumstances independently and there is no illegality or infirmity in impugned judgment of the trial Court which warrants any interference from this Court.

14. In the result, the appeal fails and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge